

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Ricci Saliba,

10 Plaintiff,

11 v.

12 KS Statebank Corporation,

13 Defendant.
14

No. CV-20-00503-PHX-JAT

ORDER

15 Pending before the Court is the Joint Motion to Approve Cy Pres Recipient (“Joint
16 Motion”). (Doc. 66).

17 **I. BACKGROUND**

18 The Court approved a Final Class Action Settlement on October 6, 2021. (Doc. 63).
19 The settlement agreement, in part, provided the following:

20 If any amounts remain 180 days from issuance of this second distribution, the
21 Parties shall seek Court approval of a cy pres award to a nonprofit charitable
22 organization. The Parties shall jointly select a cy pres recipient prior to moving for
23 the Court’s approval.

24 (Doc. 55-1 p. 22-23; Doc. 66-1 p. 22-23). The parties followed the distribution procedures
25 and \$5,577.38 remains. (Doc. 66 p. 2). The parties then filed the pending Joint Motion,
26 proposing People Acting Now Discover Answers (“PANDA”) as the *cy pres* recipient.
27 (Doc. 66 p. 2). PANDA’s mission “is to support discovery processes that lead to improved
28 treatments and cures for devastating childhood diseases.” *Our Impact*, PANDA
[https://perma.cc/JM34-YMN8]. PANDA “accomplishes its mission by raising awareness
and private funding for the Steele Children’s Research Center at the University of

1 Arizona.” *Id.*

2 II. DISCUSSION

3 a. Legal Standard

4 “Cy pres distributions must account for the nature of the plaintiffs’ lawsuit, the
5 objectives of the underlying statutes, and the interests of the silent class members, including
6 their geographic diversity.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011)
7 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307-08 (9th Cir.
8 1990)). A beneficiary based in a single location may still be appropriate if the beneficiary
9 has a nationwide reach. *See In re Easysaver Rewards Litig.*, 906 F.3d 747, 761-62 (9th Cir.
10 2018) (finding appropriate university recipients of single location because research topics
11 had national scope, research was “directly responsive” to underlying issues, and impact of
12 research was not confined to single location.)

13 There must also be “a driving nexus between the plaintiff class and the *cy pres*
14 beneficiaries.” *Id.* at 1038. There are many cases where courts have rejected a proposed *cy*
15 *pres* recipient because it failed the nexus requirement. In *Six Mexican Workers*, the court
16 rejected a *cy pres* award to the “Inter-American Fund (IAF) for indirect humanitarian
17 assistance in Mexico” in part because benefitted group was “too remote from the plaintiff
18 class” and there was “no reasonable certainty that any member [would] be benefitted.” 904
19 F.2d at 1304-09. In *Nachshin*, the court rejected donations to the Legal Aid Foundation of
20 Los Angeles, the Boys and Girls Club of Santa Monica and Los Angeles, and the Federal
21 Judicial Center Foundation in part because the recipients had nothing to do with the
22 plaintiff’s claims, which related to AOL’s provision of commercial email services. 663
23 F.3d at 1040. The Ninth Circuit concluded that “[t]he parties should not have trouble
24 selecting beneficiaries from any number of non-profit organizations that work to protect
25 internet users from fraud, predation, and other forms of online malfeasance.” *Id.* at 1041.
26 In *Dennis v. Kellogg*, the settlement specified that “any charity to receive a portion of the
27 *cy pres* distributions [would] be one that feeds the indigent.” 697 F.3d 858, 866 (9th Cir.
28 2012). The court found that while a noble goal, and while cereal was part of the case subject

1 matter, such recipients were “divorced from the concerns embodied in [the] consumer
 2 protection laws” at issue in the case. *Id.* On the other hand, a *cy pres* recipient set up to
 3 “promote the interests of online privacy and security” had “a direct and substantial nexus
 4 to the interests of absent class members” where the litigation concerned “various state and
 5 federal privacy statutes.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 816-17, 821 (9th Cir. 2012).

6 **b. Analysis**

7 The Court appreciates why the parties proposed PANDA as a worthy *cy pres*
 8 recipient. However, “[n]ot just any worthy recipient can qualify as an appropriate *cy pres*
 9 beneficiary.” *Dennis*, 697 F.3d at 865. The Joint Motion does not explain how PANDA
 10 qualifies as an appropriate *cy pres* beneficiary based on well-established Ninth Circuit law.
 11 On cursory examination of such requirements, the Court does not see how PANDA can
 12 meet such requirements because there is no nexus between the objectives of the Telephone
 13 Consumer Protection Act and PANDA’s research on childhood diseases.

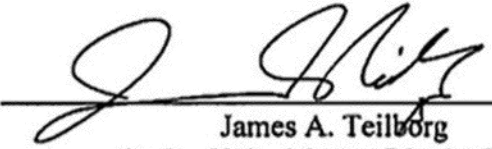
14 **III. CONCLUSION**

15 Plaintiff should identify the legal authority that supports the Court approving the
 16 selection of PANDA as the *cy pres* recipient. If there is no such legal authority, Plaintiff
 17 should select a different recipient and submit another motion.

18 Accordingly,

19 **IT IS ORDERED** that the Joint Motion to Approve Cy Pres Recipient (Doc. 66) is
 20 denied without prejudice.

21 Dated this 20th day of September, 2024.

22
 23
 24 
 25 James A. Teilborg
 26 Senior United States District Judge
 27
 28